

BEFORE THE COLORADO BALLOT TITLE SETTING BOARD

Christopher Fine, Objector,

vs.

Steven Ward and Levi Mendyk, Proponents.

MOTION FOR REHEARING ON INITIATIVE 2021-2022 #121

Christopher Fine, registered elector of the County of Larimer and the State of Colorado, through his undersigned counsel, objects to the Title Board’s (the “Board”) title and ballot title and submission clause set for Initiative 2021-2022 #121.

The Board set a title for Initiative 2021-2022 #121 on April 20, 2022.¹ The Board designated and erroneously fixed titles for this measure.

I. This measure violates the constitutional single subject requirement.

The single-subject requirement in Article V, sec. 1(5.5) is summarized as a direct test of the underpinnings of an initiative.

An initiative violates the single subject requirement when it has at least two **distinct and separate** purposes which are not dependent upon or connected with each other.... Where two provisions advance **separate and distinct** purposes, the fact that they both relate to a broad concept or subject is insufficient to satisfy the single subject requirement.

In re Title, Ballot Title & Submission Clause, and Summary for 1997-1998 #64, 960 P.2d 1192 (Colo. 1998).

¹

A change to the Colorado Revised Statutes concerning the expansion of retail sale of alcohol beverages, and, in connection therewith, establishing a new fermented malt beverage and wine retailer license to allow grocery stores, convenience stores, and other business establishments licensed to sell fermented malt beverages, such as beer, for off-site consumption to also sell wine for off-site consumption; automatically converting such a fermented malt beverage retailer license that was in effect on March 1, 2023, to the new fermented malt beverage and wine retailer license; reducing the distance between a new or relocated licensed retail liquor store from 1500 feet to 500 feet from an existing fermented malt beverage and wine licensed retailer; and allowing fermented malt beverage and wine retailer licensees to conduct tastings if approved by the local licensing authority.

B. The initiative's multiple purposes

Where multiple subjects are part of one measure, this Board's job would be easier if an initiative's proponents just made plain in the text of their measure that one purpose in law was "separate and distinct" from another specific purpose. This Board would also benefit from existing law where the General Assembly just states that certain matters are separate and distinct. But how often does that happen?

It happened here. This measure confesses that its combination of wine and beer for food store sales violate the principles underlying the single subject requirement. Under current law (and under this measure's changes to that law), retail beer sales and retail wine sales are "separate and distinct."

The general assembly further recognizes that **fermented malt beverages and malt liquors are *separate and distinct* from, and have a unique regulatory history in relation to, vinous and spirituous liquors**; however, maintaining a separate regulatory framework and licensing structure for fermented malt beverages (*) under this article 4 is no longer necessary **except at the retail level**. Furthermore, to aid administrative efficiency, article 3 of this title 44 applies to the regulation of fermented malt beverages (*), except when otherwise expressly provided for in this article 4.

C.R.S. 44-4-102(2) (emphasis added).

This measure does not repeal this legislative declaration. Instead, it includes it in a slightly modified form, adding the phrase, "AND FERMENTED MALT BEVERAGES AND WINE", where (*) has been placed in the above quotation. *See* Section 7 of Initiative #121.

Thus, in the proposed measure and in existing law, there is an identification of "separate and distinct" interests (the regulation of beer and wine) that nonetheless leaves them "separate and distinct... at the retail level." The measure blesses the combination of regulation of the two products while leaving intact the "separate and distinct" natures of retail sales of wine and beer, which separation is still deemed by #121 to be "necessary."

Put differently, so long as the retail level regulation of wine and beer is legally categorized as "separate and distinct," a measure that treats them in the same way and authorizes the sale of both types of alcohol from the same or adjacent shelves necessarily violates the single subject requirement. A measure cannot have a single subject if it involves two items that the law mandates are "separate and distinct." The legislature's recognition and the proponents' embrace of the "separate and distinct" character of these two products in the retail setting for this type of license must be acknowledged by the Board. And that acknowledgement is a roadblock to finding this combination to be a single subject.

II. The initiative's additional purpose – to repeal election law about prevailing measures through its “repeal and reenact” clauses

At hearing before the Title Board, proponents admitted that they included “repeal and reenact” clauses so that, notwithstanding the number of votes Initiative #121 might get as opposed to any other measure, this measure would prevail over any potential conflict with any other ballot measure or statutory amendment.

In other words, proponents seek to amend – for their measure only – C.R.S. 1-40-123(2) that provides, “in case of adoption of conflicting provisions, the one (ballot measure) that receives the greatest number of affirmative votes prevails in all particulars as to which there is a conflict.”

Not one voter in Colorado, except possibly for #121’s drafters and the three Title Board members who sat as to this measure, would know that this provision is included in this initiative. It is a violation of the single subject requirement for a measure to both change the substantive law in one area and unrelated election procedures. The Title Board should reject #121 as violating the single subject requirement on this ground alone. *In re Title, Ballot Title & Submission Clause for 2001-2002 #43*, 46 P.3d 438, 446 (Colo. 2002) (“The elimination of the single subject requirement constitutes an additional subject unrelated to the procedural requirements which must be satisfied to entitle a proponent to place his measure on the ballot”).

III. The Board violated the fair title requirement by misstating the measure.

- A. The measure anticipates and provides for wine sales by licensees who provide both on and off premises consumption, see, e.g, Section 7, but the title indicates that the measure reaches only to wine sold “for off-site consumption” and should be corrected.
- B. In addressing the conversion of the license, the titles should include the measure’s wording that the conversion is done “without any further action by the state or local licensing authority or licensee.”

RESPECTFULLY SUBMITTED this 27th day of April, 2022.

RECHT KORNFELD, P.C.

s/ Mark G. Grueskin
Mark G. Grueskin
1600 Stout Street, Suite 1400
Denver, CO 80202
Phone: 303-573-1900
Email: mark@rklawpc.com

Objector's Address:

912 Butte Pass Drive
Fort Collins, CO 80526

CERTIFICATE OF SERVICE

I hereby affirm that a true and accurate copy of the **MOTION FOR REHEARING ON INITIATIVE 2021-2022 #121** was sent this day, April 27, 2022, via email to the proponents via their legal counsel:

Suzanne Taheri
Maven Law Group
STaheri@mavenlawgroup.com

s/ Erin Holweger _____